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TO RUEHC/SECSTATE WASHDC 0455  
INFO RUEHUJA/AMEMBASSY ABUJA 0081  
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SENSITIVE  
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TREASURY FOR DFIELD, AIERONIMO, RHALL, DPETERS  
STATE PASS OPIC FOR DERB, ZHAN, MSTUCKART, JEDWARDS  
STATE PASS TDA FOR LFITTS, PMARIN  
STATE PASS EXIM FOR JRICHTER, KJACKSON, KJANIK  
DOC FOR 3317/ITA/OA/KBURRESS  
DOE FOR GPERSON, CHAYLOCK

E.O. 12958: N/A  
TAGS: [ENRG](#) [EINV](#) [EFIN](#) [PGOV](#) [NI](#)

SUBJECT: NIGERIA: AES, GON IN INTERNATIONAL ARBITRATION

Ref: Lagos 143

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¶1. (SBU) Summary: International arbitration over a tax exemption dispute between U.S.-based AES Corporation and the Government of Nigeria is ongoing with hearings scheduled for the end of 2009 and settlement expected in early 2010. AES has drawn USD 40 million under the GON's USD 60 million letter of credit issued by Citibank. It is unclear whether Citibank will reinstate the letter of credit, or how the GON will make future payments for power. End Summary.

¶2. (SBU) Robert Kremer, AES Risk Analyst, told EconOff January 8, that the arbitrators representing the Government of Nigeria (GON) and U.S.-based AES Corporation had met in London on January 7. Arbitration hearings will take place between October and December ¶2009. Kremer believes arbitration settlement will occur in early ¶2010. (Note: AES is pursuing international arbitration primarily over the GON's refusal to honor the tax exemption provision granted to the company in its power purchase agreement. End Note) (Ref A)

¶3. (SBU) Jim Doak, AES Country Manager, said AES had completed the first part of the draw down, USD 34 million, under the GON's USD 60 million letter of credit (LC) with Citibank in November 2008. AES is holding off drawing down the balance of USD 26 million under the LC, and has given February 1 as the deadline for the LC's reinstatement. The GON has repaid the drawn down amount to Citibank and is working with Citibank to reinstate the LC. However, Kremer believes that, in light of the economic situation, Citibank might not be able to reinstate the LC. The LC is due to expire in December 2009. Given the fallen oil price and global economic downturn, the GON will be in a "tight spot" with respect to making future payments. (Note: The GON has a track record of making periodic, albeit late, payments even while it was enjoying an oil windfall. End Note)

¶4. (SBU) Comment: While it is easy to attribute Citibank's reluctance to renew the LOC to the global financial crisis, the project has problems of its own making that have been brewing for years. Still, AES has pursued this arbitration quietly. It is evident that, despite all setbacks, AES has no plan to pull out of Nigeria. Kremer, disenchanted with the GON's business dealings, conceded that the unmet market demand for power is keeping companies like AES in Nigeria. End Comment.

¶5. (U) This cable was cleared with Embassy Abuja.

Blair